

1 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:002. Definitions for 401 KAR Chapter 5.

6 RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120,  
7 224.99-010, 15 U.S.C. 2601 et seq., 33 U.S.C. 1251 et seq. [~~224.10-100, 224.10-110, 224.16-050,~~  
8 ~~224.16-060, 224.40, 224.43, 224.46, 224.50, 224.60, 224.70, 224.71, 224.73,~~] 40 C.F.R. Parts 35,  
9 116, 130, [~~131,~~] 136, 401 - 471, 15 U.S.C. 2601 et seq., 33 U.S.C. 1345, 6901 et seq., 42 U.S.C.  
10 7401 et seq, 9601, 11023 [~~1281, 1288, 1313(e), 1314(b), 1341, 1342, 42 U.S.C. 300f - j, 42 U.S.C.~~  
11 ~~9601—9675]~~

12 STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 15 U.S.C. 2601  
13 et seq., 33 U.S.C. 1251 et seq., 1342, 1345. [~~224.10-110, 224.16-060, 224.70-100, 224.70-110,~~  
14 ~~224A.111, 224A.112, 224A.113,~~] 40 C.F.R. Parts 116, 130, [~~131,~~] 136, 401 - 471, [~~33 U.S.C. 1281,~~  
15 ~~1288, 1313(e), 1314(b), 1341, 1342]~~

16 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the  
17 Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations  
18 for the prevention, abatement, and control of all water pollution. This administrative regulation and  
19 401 KAR 5:026, 5:029, 5:030, and 5:031 establish procedures to protect the surface waters of the  
20 Commonwealth, and thus protect water resources. 401 KAR Chapter 5 establishes administrative  
21 regulations for the issuance of permits to construct, modify, and operate facilities which discharge

pollutants to waters of the Commonwealth. This administrative regulation establishes definitions for terms and acronyms, abbreviations, and symbols used in 401 KAR Chapter 5, relating to the issuance of those permits. Where applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 C.F.R. Parts 116, 136 401 - 471, and the planning requirements in 40 C.F.R. Part 130; there are no definitions that are more stringent than federal requirements.

Section 1. Definitions. (1) "Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

(2) "Activity" means, for purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with facility, any KPDES point source, or any other activity, including land or appurtenances thereto, that is subject to regulation under the KPDES program.

(3) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an  $LC_{50}$ , of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.

(4) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.

(5) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short-term exposure, of ninety-six (96) hours or less, to a specific toxic substance or mixture of toxic substances.

(6) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or  $LC_{50}$ , by the end of the acute exposure period.

1           (7)    "Administrator" means the administrator of the United States Environmental  
2   Protection Agency, or the administrator's authorized representative.

3           (8)    "Adversely affect" or "adversely change" means, for purposes of 401 KAR 5:026  
4   through 5:031, to alter or change the community structure or function, to reduce the number or  
5   proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic  
6   species so that aquatic life use support or aquatic habitat is impaired.

7           (9)    "Agricultural wastes handling system" means a no-discharge structure or equipment  
8   that conveys, stores, or treats manure from an animal feeding operation prior to land application,  
9   but does not include a swine feeding operation.

10          (10)   "Alternative effluent limitations" means all effluent limitations or standards of  
11   performance for the control of the thermal component of any discharge which are established under  
12   401 KAR 5:055.

13          (11)   "Animal feeding operation" means, for purposes of 401 KAR 5:005 and 5:050 to  
14   5:080, a lot or facility, other than an aquatic animal production facility, where the following  
15   conditions are met:

16          (a)1.   Animals other than aquatic animals, have been, are, or will be stabled or confined  
17   and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period;  
18   and

19          2.     Crops, vegetation forage growth, or postharvest residues are not sustained in the  
20   normal growing season over any portion of the lot or facility.

21          (b)    Two (2) or more animal feeding operations under common ownership are  
22   considered to be a single animal feeding operation if they adjoin each other or if they use a common  
23   area or system for the disposal of wastes.

(12) "Animal unit" means, for purposes of 401 KAR 5:005 and 5:050 to 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:

$$\text{Animal Unit} = (N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$$

Where:

$N_1$  = Number of slaughter and feeder cattle;

$N_2$  = Number of mature dairy cattle;

$N_3$  = Number of swine weighing over twenty-five (25) kg;

$N_4$  = Number of sheep; and

$N_5$  = Number of horses.

(13) "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject under KRS Chapter 224, and administrative regulations promulgated pursuant thereto, including effluent limitations, water quality standards, standards of performance, and toxic effluent standards.

(14) "Application" means the document submitted by an applicant to the cabinet which provides information used by the cabinet in the issuance of a permit or approval. The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.

(15) "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and which has been approved by the cabinet.

(16) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants and animals.

(17) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.

(18) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.

(19) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.

(20) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.

(21) "Available" means located within the planning area and:

(a) Located within one and zero-tenths (1.0) mile of a regional facility for WWTPs with an average daily design capacity larger than 1,000 gpd. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(22) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

(23) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a

calendar week divided by the number of daily discharges measured during that week.

(24) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.

(25) "Barrel" means forty-two (42) U.S. gallons.

(26) "BAT" means best available technology economically achievable.

(27) "BCT" means best conventional pollutant control technology.

(28) "Best management practices" or "BMPs" means, for purposes other than agriculture operations, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. BMPs also include treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(29) "Biochemical oxygen demand", "BOD", or "BOD<sub>5</sub>" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(30) "BMPs" means best management practices.

(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.

(32) "BOD" or "BOD<sub>5</sub>" means biochemical oxygen demand.

(33) "BPT" means best practicable technology currently available.

(34) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.

(35) "Building sewer" means that part of the drainage system which extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(36) "Bypass" means the intentional diversion of sewage or wastestreams from a portion of a facility or industrial user's treatment facility.

(37) "°C" means degrees Celsius.

(38) "CAH" means cold water aquatic habitat.

(39) "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(40) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(41) "CBOD" means carbonaceous biochemical oxygen demand.

(42) "CEC" means cation exchange capacity.

(43) "CERCLA" means the Comprehensive Environmental Response, Compensation,

and Liability Act, as amended at 42 U.S.C. 9601 et seq..

(44) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.

(45) "Certified operator" means a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010.

(46) "cfm" means cubic feet per minute.

(47) "C.F.R." means Code of Federal Regulations.

(48) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.

(49) "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(50) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.

(51) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.

(52) "Coal remining operation" means a surface coal mining operation which begins after



July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.

(53) "COD" means chemical oxygen demand.

(54) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.

(55) "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(56) "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(57) "Composite sample" means:

(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;

(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;

(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or

(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.

(58) "Concentrated animal feeding operation" means, for purposes of 401 KAR 5:005, [5:009], and 5:050 to 5:080, an animal feeding operation where:

(a) More than the following numbers of indicated animals are confined:

1. 1,000 slaughter and feeder cattle;
2. 700 mature dairy cattle, whether milked or dry cows;
3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7. 100,000 laying hens or broilers if the facility has continuous overflow watering;
8. 30,000 laying hens or broilers if the facility has a liquid manure system;
9. 5,000 ducks; or
10. 1,000 animal units; or

(b)1. More than the following number and types of animals are confined:

- a. 300 slaughter or feeder cattle;
- b. 200 mature dairy cattle, whether milked or dry cows;
- c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers if the facility has continuous overflow watering;

1           h.       9,000 laying hens or broilers if the facility has a liquid manure system;

2           i.       1,500 ducks; or

3           j.       300 animal units; and

4           2.       Either pollutants are discharged into navigable waters through a manmade ditch,  
5 flushing system or other similar manmade device; or pollutants are discharged directly into waters  
6 of the Commonwealth which originate outside of and pass over, across, or through the facility or  
7 otherwise come into direct contact with the animals confined in the operation.

8           (c)      If an animal feeding operation discharges only during a twenty-five (25) year,  
9 twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered  
10 to be a concentrated animal feeding operation.

11          (59)     "Concentrated aquatic animal production facility" means a hatchery, fish farm, or  
12 other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401  
13 KAR 5:060.

14          (60)     "Consolidation sewer" means a conduit, without direct sanitary connections, which  
15 intercepts and transports combined sewer storm overflows to a treatment facility or a single  
16 combined sewer overflow point.

17          (61)     "Continuous discharge" means a discharge which occurs without interruption  
18 throughout the operating hours of the facility, except for infrequent shutdowns for maintenance,  
19 process changes, or other similar activities.

20          (62)     "Control authority" means the POTW if the POTW has an approved pretreatment  
21 program or the cabinet if the POTW does not have an approved pretreatment program.

22          (63)     "Conventional domestic water supply treatment" means or includes coagulation,  
23 sedimentation, filtration, and chlorination.

(64) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(65) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(66) "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents which represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(67) "CSO" means combined sewer overflow.

(68) "CWA" means the Clean Water Act, as amended.

(69) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

(70) "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program under CWA Section 402, [§33 U.S.C. Section 1342].

(71) "Day" means a twenty-four (24) hour period.

(72) "Designated project area" means the portions of the waters of the Commonwealth

1 within which the permittee or permit applicant plans to confine the cultivated species, using a  
2 method or plan of operation, including, but not limited to, physical confinement, which, on the  
3 basis of reliable scientific evidence, is expected to ensure that specific individual organisms  
4 comprising an aquaculture crop will enjoy increased growth attributable to the discharge of  
5 pollutants, and be harvested within a defined geographic area.

6 (73) "Direct discharge" means the discharge of a pollutant into waters of the Common-  
7 wealth if the discharge is not included under the definition of indirect discharger, but does not  
8 include a discharge of animal waste onto land by land application if the discharge does not reach the  
9 waters of the Commonwealth.

10 (74) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or  
11 combination of pollutants to waters of the Commonwealth from any point source. This definition  
12 includes, but is not limited to, additions of pollutants into waters of the Commonwealth from  
13 surface run-off which is collected or channelled by human effort; discharges through pipes, sewers  
14 or other conveyances whether publicly or privately owned which do not lead to a treatment works;  
15 and discharges through pipes, sewers, or other conveyances leading into privately owned treatment  
16 works.

17 (75) "Discharge monitoring report" or "DMR" means the report including any  
18 subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by  
19 KPDES permittees.

20 (76) "Disappearing stream" means an intermittent or perennial surface stream that  
21 terminates and drains underground through caves, fractures, or swallets in the stream bed.

22 (77) "Disposal well" means a borehole drilled or proposed to be drilled, or a well  
23 converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other

fluid by injection or other method into a subsurface zone.

(78) "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet.

(79) "DMR" means discharge monitoring report.

(80) "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(81) "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(82) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry; and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f - 300j.

(83) "Draft permit" means a document prepared under 401 KAR ~~[5:009 or]~~ 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR ~~[5:009 or]~~ 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(84) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.

(85) "Dry gas well" means a gas well producing one (1) barrel or less of produced water

1 at maximum production conditions during a given twenty-four (24) hour period.

2 (86) "DWS" means domestic water supply.

3 (87) "Effluent ditch" means that portion of a treatment system which is a discrete,  
4 person-made conveyance, either totally owned, leased or under valid easement by the discharger,  
5 which transports a discharge to surface waters of the Commonwealth.

6 (88) "Effluent lagoon" means a treatment lagoon.

7 (89) "Effluent limitation" is defined at KRS 224.01-010(12).

8 (90) "Effluent limitations guideline" means a federal regulation published by the  
9 administrator under CWA Section 304(b)<sub>2</sub> [§33 U.S.C. Section 1314(b)] to adopt or revise  
10 technology-based effluent limitations.

11 (91) "Engineer" means a professional engineer.

12 (92) "Enhanced recovery well" means a well used for the injection of fluids to improve  
13 or maintain reservoir productivity.

14 (93) "Environmental Protection Agency" or "EPA" means the United States  
15 Environmental Protection Agency.

16 (94) "Epilimnion" means the thermally homogeneous water layer overlying the  
17 metalimnion of a thermally stratified lake or reservoir.

18 (95) "Establishment" means a manufacturing or industrial works or facility in the  
19 operation of which sewage, industrial wastes, or other wastes are generated or stored including but  
20 not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral  
21 processing or producing facility, quarry, or oil refinery.

22 (96) "Eutrophication" means the enrichment of a surface water by the discharge or  
23 addition of a nutrient.

(97) "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 5:030.

(98) "Excessive infiltration" means a high groundwater period induced peak infiltration rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly. For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(99) "Excessive inflow" means a rainfall induced peak inflow rate which results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP. For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements. It does not include overflows which result from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(100) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.

(101) "Existing use" means a legitimate use being attained in or on a surface water of the Commonwealth on or after November 28, 1975, irrespective of its use designation.

(102) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(103) "°F" means degrees Fahrenheit.

(104) "Facility" means:



1 (a) For purposes of 401 KAR 5:005, or 5:006, [~~or 5:009,~~] a sewage system as defined in  
2 KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved  
3 pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090;

4 (b) For purposes of 401 KAR 5:050 to 5:080 and when used in conjunction with  
5 activity, any KPDES point source, or any other facility, including land or appurtenances thereto,  
6 that is subject to regulation under the KPDES program; or

7 (c) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or  
8 improvement used in the exploration, drilling, or production of oil or gas or used for treating,  
9 storing, or disposing of produced water.

10 (105) "Facilities or equipment" means buildings, structures, process or production  
11 equipment, or machinery which form a permanent part of the new source and which will be used in  
12 its operation, if these facilities or equipment are of such value as to represent a substantial  
13 commitment to construct. It excludes facilities or equipment used in connection with feasibility,  
14 engineering, and design studies regarding the source or water pollution treatment for the source.

15 (106) "Fecal coliform" means the portion of the coliform group of bacteria which are  
16 present in the intestinal tract or the feces of warm-blooded animals. It generally includes organisms  
17 which are capable of producing gas from lactose broth in a suitable culture medium within  
18 twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0.2)  
19 degrees C.

20 (107) "Filter strip" means a strip or area of vegetation for removing sediment, organic  
21 material, and other pollutants from runoff and wastewater.

22 (108) "Flood relief sewer" means a conduit, without direct sanitary connections, that is  
23 used to transport sewage when a flood control structure or overflow detention basin is in operation.

(109) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(110) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(111) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(112) "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.

(113) "GPD" or "gpd" means gallons per day.

(114) "Grab sample" means:

(a) For purposes of 401 KAR 5:045, a single instantaneous portion of the effluent; or

(b) For purposes of 401 KAR 5:050 to 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(115) "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(116) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(117) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 5:080, any pollutant designated under 40 C.F.R. Part 116.

(118) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(119) "Hydraulic gradient" means the vertical distance measured from the surface of the

1 ~~[swine waste in the]~~ lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by  
2 the thickness of the liner.

3 (120) "Hypolimnion" means the lower cold region of a thermally stratified lake or  
4 reservoir that extends below the metalimnion to the bottom.

5 (121) "IC<sub>25</sub>" means an inhibition concentration of twenty-five (25) percent.

6 (122) "Illicit discharge" means any discharge to a municipal separate storm sewer that is  
7 not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the  
8 KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting  
9 from fire fighting activities.

10 (123) "Impact" means, for the purpose of 401 KAR 5:026 through 5:031, a change in the  
11 chemical, physical, or biological quality or condition of a surface water.

12 (124) "Impairment" means, for the purpose of 401 KAR 5:026 through 5:031, a  
13 detrimental impact to a surface water that prevents attainment of a designated use.

14 (125) "Inactive mining operations" means mining sites that are not being actively mined,  
15 but which have an identifiable owner or operator. Inactive mining operations do not include sites  
16 where mining claims are being maintained prior to disturbances associated with the extraction,  
17 beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken  
18 for the sole purpose of maintaining a mining claim.

19 (126) "Incorporated place" means a city, town, township, or village that is created under  
20 the Kentucky Revised Statutes.

21 (127) "Indigenous aquatic life" means naturally occurring aquatic organisms including but  
22 not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles,  
23 amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be

absent from a surface water.

(128) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(129) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(130) "Industrial user" or "user" means a source of indirect discharge.

(131) "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.

(132) "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(133) "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(134) "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source which directs rainwater into the sewer system.

(135) "Inhibition concentration of twenty-five (25) percent" or "IC<sub>25</sub>" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which no unacceptable chronic effect is observed.

1           (136) "Injection" means~~[-, for purposes of 401 KAR 5:009,]~~ a type of land application in  
2   which the waste is placed directly beneath the land surface.

3           (137) "Intended use plan" means that document developed by the cabinet annually or  
4   biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects  
5   qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.

6           (138) "Interference" means a discharge which, alone or in conjunction with discharges  
7   from other sources:

8           (a)    Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge  
9   processes, use, or disposal; and

10          (b)    Is a cause of a violation of a requirement of the POTW's KPDES permit, including  
11   an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or  
12   disposal in compliance with the following statutory provisions and administrative regulations or  
13   permits issued thereunder or under more stringent local administrative regulations: Section 405 of  
14   the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including  
15   RCRA, and including any administrative regulations contained in a sludge management plan  
16   prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the  
17   Toxic Substances Control Act as amended.

18          (139) "Intermediate facility" means a WWTP with an average daily design capacity of  
19   10,000 to 49,999 gallons per day (GPD) or sewer lines of 2,500 feet to 5,000 feet in length  
20   including appurtenances.

21          (140) "Intermediate nonpublicly-owned treatment works" means a facility which has a  
22   design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional  
23   pollutants and which is not a POTW.

1 (141) "Intermediate WWTP" means:

2 (a) WWTP with an average daily design capacity of 10,000 to 49,999 gpd; or

3 (b) For coal washing facilities, a WWTP which serves a permanent coal processing  
4 facility that processes less than or equal to 500 tons per hour of raw coal.

5 (142) "Intermittent water" means a stream that flows only at certain times of the year.

6 (143) "Interstate agency" means an agency of which Kentucky and one (1) or more states  
7 is a member established by or under an agreement or compact, or any other agency, of which  
8 Kentucky and one (1) or more other states are members, having substantial powers or duties  
9 pertaining to the control of pollution as determined and approved by the secretary or administrator  
10 under the CWA or KRS Chapter 224.

11 (144) "IWWTP" means an industrial WWTP.

12 (145) "KAR" means Kentucky Administrative Regulations.

13 (146) "Karst" means the type of geologic terrane underlain by carbonate rocks where  
14 significant solution of rock has occurred due to flowing groundwater.

15 (147) "Karst feature" means a naturally occurring feature formed by the dissolution of  
16 carbonate rock including but not limited to a sinkhole drain, karst window, swallet, spring, sinking  
17 stream, or cave.

18 (148) "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the  
19 Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and  
20 enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

21 (149) "Kentucky Intermunicipal Operational Permit" or "KIMOP" means a permit issued  
22 pursuant to 401 KAR 5:005 for operating a publicly-owned sewer system which has more than  
23 5,000 linear feet of sewer line which discharges to a sewer system, or a WWTP which is owned by

another person.

(150) "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP which does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(151) "kg" means kilograms.

(152) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(153) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(154) "KRS" means Kentucky Revised Statutes.

(155) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(156) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(157) "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or sewer lines of more than 5,000 feet in length including appurtenances.

(158) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census; or ~~[latest census of the Bureau of Census;]~~

(b) Owned or operated by a municipality other than that described in paragraph (a) of

1 this subsection, and that are designated by the cabinet as part of the large or medium municipal  
2 separate storm sewer system due to the interrelationship between the discharges of the designated  
3 storm sewer and the discharges from municipal separate storm sewers described under paragraph  
4 (a) of this subsection. In making this determination the cabinet may consider the following factors:

5 1. Physical interconnections between the municipal separate storm sewers;

6 2. The location of discharges from the designated municipal separate storm sewer  
7 relative to discharges from municipal separate storm sewers described in paragraph (a) of this  
8 subsection;

9 3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

10 4. The nature of the receiving waters; and

11 5. Other relevant factors; or

12 (c) The cabinet may, upon petition, designate as a large municipal separate storm sewer  
13 system, those municipal separate storm sewers located within the boundaries of a region defined by  
14 a storm water management regional authority based on a jurisdictional, watershed, or other  
15 appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of  
16 this subsection.

17 (159) "Large nonpublicly-owned treatment works" means a facility which has a design  
18 flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional  
19 pollutants and which is not a POTW.

20 (160) "Large WWTP" means:

21 (a) A WWTP with an average daily design capacity of 50,000 GPD or more; or

22 (b) For coal washing facilities, a WWTP which serves a permanent coal processing  
23 facility that processes more than 500 tons per hour of raw coal.



1 (161) "LC<sub>1</sub>" means that concentration of a toxic substance or mixture of toxic substances  
2 that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity  
3 test during a specified exposure period.

4 (162) "LC<sub>50</sub>" means that concentration of a toxic substance or mixture of toxic substances  
5 that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity  
6 test during a specified exposure period.

7 (163) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to  
8 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs  
9 or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on  
10 land where water is applied intentionally on the logs.

11 (164) "Long-term CSO control plan" means a control plan which complies with the  
12 "Combined Sewer Overflow Control Policy" issued by the U.S. EPA in the "Federal Register" on  
13 April 19, 1994 (59 FR 18688). Incorporated by reference in Section 3 of this administrative  
14 regulation.

15 (165) "Maintain" means, for purposes of 401 KAR 5:026 through 5:031, to preserve or  
16 keep in present condition by not allowing an adverse permanent or long-term change to water  
17 quality or to a population of an aquatic organism or its habitat.

18 (166) "Maintenance replacement" means replacement of:

19 (a) Existing component parts with component parts that have similar characteristics and  
20 capacity; or

21 (b) A section of sewer or force main with the same size, alignment, and slope;

22 (c) The term does not include replacement of an entire WWTP with a new WWTP.

23 (167) "Major facility" means any KPDES facility or activity classified as such by the

cabinet in cooperation with the regional administrator. Designation as a major industry as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(168) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(169) "Major municipal separate storm sewer outfall" or "major outfall" means:

(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or

(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.

(170) "Major outfall" means a major municipal separate storm sewer outfall.

(171) "Manmade" means constructed by humans.

(172) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or subgroup of a industrial users identified by the POTW, may discharge pursuant to limits developed under 401 KAR 5:057, Section 3(3).

(173)~~(172)~~ "Maximum daily discharge limitation" means the highest allowable daily

1 discharge.

2 (174)[(173)] "Measurement" means the ability of the analytical method or protocol to  
3 quantify as well as identify the presence of the substance in question.

4 (175) [(174)] "Medium municipal separate storm sewer system" means all municipal  
5 separate storm sewers that are either:

6 (a) Located in an incorporated place with a population of 100,000 or more but less  
7 than 250,000, as determined by the 1990 Decennial Census [~~latest census by~~] by the Bureau of  
8 the Census; or

9 (b) Owned or operated by a municipality other than that described in paragraph (a) of  
10 this subsection, and that are designated by the cabinet as part of the large or medium municipal  
11 separate storm sewer system due to the interrelationship between the discharges of the designated  
12 storm sewer and the discharges from municipal separate storm sewers described under paragraph  
13 (a) of this subsection. In making this determination the cabinet may consider the following factors:

14 1. Physical interconnections between the municipal separate storm sewers;  
15 2. The location of discharges from the designated municipal separate storm sewer  
16 relative to discharges from municipal separate storm sewers described in paragraph (a) of this  
17 subsection;

18 3. The quantity and nature of pollutants discharged to waters of the Commonwealth;

19 4. The nature of the receiving waters; and

20 5. Other relevant factors; or

21 (c) The cabinet, may, upon petition, designate as a medium municipal separate storm  
22 sewer system, municipal separate storm sewers located within the boundaries of a region defined by  
23 a storm water management regional authority based on a jurisdictional, watershed, or other

appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.

(176)~~(175)~~ “Metalimnion” means the region of the thermocline.

(177)~~(176)~~ “µg/l” means micrograms per liter, same as ppb, assuming unit density.

(178)~~(177)~~ “mgd” or “MGD” means million gallons per day.

(179)~~(178)~~ “mg/l” means milligrams per liter, same as ppm, assuming unit density.

(180)~~(179)~~ “Milligrams per liter” or “mg/l” means the milligrams of substance per liter of solution, and is equivalent to parts per million in water, assuming unit density.

(181)~~(180)~~ “Minimum design volume” means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(182)~~(181)~~ “Minor industry” means an industry that generates and discharges process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.

(183)~~(182)~~ “Minor modification to a WWTP” means, for purposes of construction approvals required by 401 KAR 5:005, a modification which does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(184)~~(183)~~ “Mixing zone” means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

1           (185) "MS4" means a municipal separate storm sewer system.

2           (186)[(184)] "Municipal separate storm sewer system" means all separate storm sewers  
3 that are defined as "large" or "medium" or "small" municipal separate storm sewer systems  
4 pursuant to subsections (158), (175) and (283) of this section, or designated under 401 KAR  
5 5:060, Section 12(1)(a)5, consisting of a conveyance or system of conveyances, including roads  
6 with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels,  
7 or storm drains:

8           (a) Owned or operated by a state, city, town, county, district, association, or other  
9 public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial  
10 wastes, storm water, or other wastes, including special districts under state law such as a sewer  
11 district, flood control district, or drainage district, or similar entity, or a designated and approved  
12 management agency under Section 208 of the CWA, 33 U.S.C. 128 that discharges to waters of the  
13 Commonwealth;

14           (b) Designed or used for collecting or conveying storm water;

15           (c) Which is not a combined sewer; and

16           (d) Which is not part of a POTW.

17           (187)[(185)] "Municipality" means a city, district, or other public body created by or  
18 under the Kentucky Revised Statutes and having jurisdiction over disposal of sewage, industrial  
19 wastes, or other wastes, or a designated and approved management agency under CWA Section  
20 208, ~~[(33 U.S.C. 1288)]~~.

21           (188)[(186)] "National Pollutant Discharge Elimination System" or "NPDES" means the  
22 national program for issuing, modifying, revoking and reissuing, terminating, monitoring and  
23 enforcing permits, and imposing and enforcing pretreatment requirements.

~~(189)~~~~[(187)]~~ "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

~~(190)~~~~[(188)]~~ "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 U.S.C. 6962 in the United States Department of Agriculture. The NRCS was formerly called the Soil Conservation Service.

~~191~~~~[(189)]~~ "Natural temperature" means, for purposes of 401 KAR 5:026 through 5:031, the temperature that would exist in waters of the Commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

~~(192)~~~~[(190)]~~ "Natural water quality" means, for purposes of 401 KAR 5:026 through 5:031, those naturally occurring physical, chemical, and biological properties of waters.

~~(193)~~~~[(191)]~~ "Net discharge" means, for purposes of 401 KAR 5:026 through 5:031, the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

~~(194)~~~~[(192)]~~ "New discharger" means, for purposes of 401 KAR 5:050 to 5:080, any building, structure, facility or installation:

- (a)1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(195)~~(193)~~ "New source" means:

(a) For purposes of 401 KAR 5:050 to 5:080, any building, structure, facility, or installation from which there is or may be a direct or indirect discharge of pollutants, the construction of which commenced:

1. After promulgation of EPA's standards of performance or pretreatment standards which are applicable to such source; or

2. After proposal of EPA's standards of performance or pretreatment standards which are applicable to such source, but only if the federal standards are promulgated within 120 days of their proposal; or

(b)1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In

determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(i) A placement, assembly, or installation of facilities or equipment;

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(196)~~(194)~~ "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(197)~~(195)~~ "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(198)~~(196)~~ "Nonprocess industry" means an industry that generates and discharges only



1 nonprocess wastewater while engaged in commercial activities including manufacturing, resource  
2 recovery, products distribution, and wholesale and retail trade. Each industry discharges  
3 nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges  
4 wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to  
5 or greater than the ninety-six (96) hour lethal concentration for fifty (50) percent mortality (96  
6 LC<sub>50</sub>) for a representative indigenous aquatic organism. If any of the above conditions is not met,  
7 then the discharge is considered to be from a minor industry.

8 (199)~~(197)~~ "NPDES" is defined in KRS 224.01-010.

9 (200)~~(198)~~ "NRCS" means the Natural Resources Conservation Service.

10 (201)~~(199)~~ "Nutrient management plan" means the plan for an individual operation  
11 developed for the purpose of recycling nutrients from animal waste onto cropland or pasture in a  
12 manner that does not cause environmental harm.

13 (202)~~(200)~~ "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum  
14 and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form  
15 and which are not the result of condensation of gas after it leaves the underground reservoir.

16 (203)~~(201)~~ "O&M" means operation and maintenance.

17 (204)~~(202)~~ "Operate" means, for purposes of 401 KAR 5:090, any act relating to the  
18 construction, operation, or maintenance of any facility.

19 (205)~~(203)~~ "Operator" means:

- 20 (a) Any person involved in the operation of a facility or activity;
- 21 (b) For purposes of 401 KAR 5:010, any person involved in the operation of a  
22 wastewater system; or
- 23 (c) For purposes of 401 KAR 5:090, any person who operates a facility.

1           (206)~~(204)~~ "Other wastes" means sawdust, bark or other wood debris, garbage, refuse,  
2   ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other  
3   foreign substances not included within the definitions of industrial wastes and sewage which may  
4   cause or contribute to the pollution of any waters of the Commonwealth.

5           (207)~~(205)~~ "Outfall" means a point source at the point where a municipal separate storm  
6   sewer discharges to waters of the Commonwealth, but does not include open conveyances  
7   connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances which  
8   connect segments of the same stream or other waters of the Commonwealth and are used to convey  
9   waters of the Commonwealth.

10          (208)~~(206)~~ "Outstanding national resource water" means a surface water categorized by  
11   the cabinet as an outstanding national resource water pursuant to 401 KAR 5:030.

12          (209)~~(207)~~ "Outstanding state resource water" means a surface water designated by the  
13   cabinet as an outstanding state resource water pursuant to 401 KAR 5:031.

14          (210)~~(208)~~ "Overburden" means any material of any nature, consolidated or  
15   unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring  
16   surface materials that are not disturbed by mining operations.

17          (211)~~(209)~~ "Overflow" means:

- 18           (a) Any intentional or unintentional diversion of flow from a facility; or  
19           (b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow  
20   from the POTW before the POTW treatment plant.

21          (212)~~(210)~~ "Owner" means any person who possesses any interest in:

- 22           (a) The right to develop, operate, or produce oil or gas; or  
23           (b) Any facility or activity.

~~(213)~~~~(211)~~ "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

~~(214)~~~~(212)~~ "Pass through" means a discharge which exits the POTW into waters of the Commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

~~(215)~~~~(213)~~ "pCi/l" means picocuries per liter.

~~(216)~~~~(214)~~ "PCR" means primary contact recreation.

~~(217)~~~~(215)~~ "Permit" means:

(a) For purposes of 401 KAR 5:005 or 5:006, a document issued by the cabinet which authorizes the permittee to construct, modify, or operate a facility;

(b) ~~For purposes of 401 KAR 5:009, a Swine Waste Management Permit; or~~

~~(c)~~ For purposes of 401 KAR 5:050 to 5:080, a KPDES permit.

~~(218)~~~~(216)~~ "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4: planning area maps; a discussion of the need for sewer service in the area; population projections; and an estimation of the twenty (20) year cost by category.

~~(219)~~~~(217)~~ "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

~~(220)~~~~(218)~~ "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged. The term does not include agricultural storm water run-off or return flows from

1 irrigated agriculture.

2 ~~(221)~~~~(219)~~ "POTW" means publicly-owned treatment works as defined in KRS 224.01-  
3 010.

4 ~~(222)~~~~(220)~~ "POTW treatment plant" means that portion of the POTW which is designed  
5 to provide treatment, including recycling and reclamation, of municipal sewage and industrial  
6 waste.

7 ~~(223)~~~~(221)~~ "ppb" means parts per billion; assuming unit density, same as µg/l.

8 ~~(224)~~~~(222)~~ "ppm" means parts per million; assuming unit density, same as mg/l.

9 ~~(225)~~~~(223)~~ "Preexisting discharge" means any discharge that is occurring when applying  
10 for a KPDES permit under 401 KAR 5:029 or 5:040.

11 ~~(226)~~~~(224)~~ "Pretreatment" means the reduction of the amount of pollutants, the  
12 elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior  
13 to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or  
14 alteration may be obtained by physical, chemical, or biological processes, process changes or by  
15 other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology  
16 includes control equipment, such as equalization tanks or facilities, for protection against surges or  
17 slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if  
18 wastewater from a regulated process is mixed in an equalization facility with unregulated  
19 wastewater or with wastewater from another regulated process, the effluent from the equalization  
20 facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

21 ~~(227)~~~~(225)~~ "Pretreatment requirement" means a substantive or procedural requirement  
22 related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

1           (228)(226) "Pretreatment standard" means a national pretreatment standard.

2           (229)(227) "Primary contact recreation water" means those waters suitable for full body  
3 contact recreation during the recreation season of May 1 through October 31.

4           (230)(228) "Primary industry category" means any industry category listed as being a  
5 primary industry in 401 KAR 5:060.

6           (231)(229) "Primary responsibility" means having the authority to conduct the  
7 procedures and practices necessary to ensure that the wastewater system or any portion thereof is  
8 operated in accordance with accepted practices, laws, and administrative regulations of the  
9 Commonwealth, or to supervise others in conducting these practices.

10          (232)(230) "Privately-owned treatment works" means any device or system which is  
11 used to treat wastes from any facility or source of sewage whose owner or operator is not the owner  
12 or operator of the treatment works and which is not a POTW.

13          (233)(231) "Process wastewater" means any water which, during manufacturing or  
14 processing, comes into direct contact with or results from the production or use of any raw material,  
15 intermediate product, finished product, by-product, or waste product.

16          (234)(232) "Produced water" means all water, pollutants, and combinations thereof  
17 resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

18          (235)(233) "Productive aquatic community" means an assemblage of indigenous aquatic  
19 life capable of reproduction and growth.

20          (236)(234) "Professional engineer" or "engineer" means a person registered to practice  
21 engineering pursuant to KRS Chapter 322.

22          (237)(235) "Project priority list" means the list developed by the cabinet pursuant to  
23 KRS Chapter 224A which includes a priority ranking of applicants for the construction of

wastewater treatment works under 33 U.S.C. 1313(e)(3)(H).

~~(238)~~~~(236)~~ "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

~~(239)~~~~(237)~~ "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeals, which is sent to EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

~~(240)~~~~(238)~~ "Public water system" shall have the meaning given it in 401 KAR 8:010.

~~(241)~~~~(239)~~ "RCRA" means the Resource Conservation Recovery Act as amended (42 U.S.C. 6901 et seq.).

~~(242)~~~~(240)~~ "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

~~(243)~~~~(241)~~ "Recommencing discharger" means a source which recommences discharge after terminating operations.

~~(244)~~~~(242)~~ "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

~~(245)~~~~(243)~~ "Regional facility" means a facility designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area. This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

~~(246)~~~~(244)~~ "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management

1 planning prepared by the designated regional planning agency pursuant to Sections 201, 205, and  
2 208 of the CWA to control point sources of pollution within a planning area.

3 ~~(247)~~~~(245)~~ "Regional planning agency" means a governmental agency, such as a city,  
4 county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has  
5 been designated pursuant to 33 U.S.C. 1288 of the CWA and 40 C.F.R. Part 130 to provide  
6 planning for the treatment of wastewater and for controls and recommendations relating to  
7 wastewater for a particular area. Those existing agencies that have developed plans pursuant to  
8 Sections 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency  
9 for the area.

10 ~~(248)~~~~(246)~~ "Regional sewage collection system" means a sewage collection system  
11 designated by a regional planning agency which is owned by a city, county, or other public body  
12 that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

13 ~~(249)~~~~(247)~~ "Register" means to file forms with the division which contain information  
14 as to oil and gas well geographic location, production, produced water production, methods used for  
15 treating, storing, or disposing of produced water, and other information deemed necessary by the  
16 division.

17 ~~(250)~~~~(248)~~ "Remined area" means only that area of any coal remining operation on  
18 which a coal mining operation was conducted before August 3, 1977.

19 ~~(251)~~~~(249)~~ "Removal" means, for purposes of 401 KAR 5:057, a reduction in the  
20 amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during  
21 treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or  
22 biological means and may be the result of specifically designed POTW capabilities or may be  
23 incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant

1 in the POTW.

2 ~~(252)~~~~(250)~~ "Representative important species" means species which are representative,  
3 in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and  
4 wildlife in the body of water into which a discharge of heat is made.

5 ~~(253)~~~~(251)~~ "Representative indicator organism" means an aquatic organism designated  
6 for use in toxicity testing because of its relative sensitivity to toxicants and its widespread  
7 distribution in the aquatic environment.

8 ~~(254)~~~~(252)~~ "Requester" means any industrial user or a POTW or other interested person  
9 seeking a variance from the limits specified in a categorical pretreatment standard.

10 ~~(255)~~~~(253)~~ "Residual solids" means the accumulated solid waste in the lower portion of  
11 a lagoon that contains greater than two and zero-tenths (2.0) percent total solids by dry weight  
12 analysis.

13 ~~(256)~~~~(254)~~ "Rock crushing and gravel washing facilities" means facilities which process  
14 crushed and broken stone, gravel, and riprap.

15 ~~(257)~~~~(255)~~ "Run-off coefficient" means the fraction of total rainfall that will appear at a  
16 conveyance as run-off.

17 ~~(258)~~~~(256)~~ "SARA" means the Superfund Amendments and Reauthorization Act, as  
18 amended.

19 ~~(259)~~~~(257)~~ "Schedule of compliance" means a schedule of remedial measures included  
20 in a permit, including an enforceable sequence of interim requirements leading to compliance with  
21 KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

22 ~~(260)~~~~(258)~~ "SCR" means secondary contact recreation.

23 ~~(261)~~~~(259)~~ "Secondary contact recreation waters" means those waters that are suitable



for partial body contact recreation, with minimal threat to public health due to water quality.

(262)~~[(260)]~~ "Secondary industry category" means any industry category which is not a primary industry category.

(263)~~[(261)]~~ "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(264)~~[(262)]~~ "Service area" means that geographic area currently being served by a regional facility.

(265)~~[(263)]~~ "Seven-Q-ten" or "7Q<sub>10</sub>" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(266)~~[(264)]~~ "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(267)~~[(265)]~~ "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(268)~~[(266)]~~ "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off, that are discharged to or otherwise enter a wastewater treatment plant.

(269)~~[(267)]~~ "Sewer line" means those devices used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer which serves an individual building. A sewer line

1 begins at the junction of two (2) building sewers which serve different buildings. Sewer lines  
2 include gravity sewer lines, pump stations, and force mains.

3 ~~(270)~~~~(268)~~ "Sewer line extension" means a proposed construction project which extends  
4 a sewer system; it includes gravity sewer lines, pump stations, and force mains.

5 ~~(271)~~~~(269)~~ "Sewer system" means the network of sewer lines, pump stations, and force  
6 mains that discharge to a common WWTP.

7 ~~(272)~~~~(270)~~ "SIC" means Standard Industrial Classification.

8 ~~(273)~~~~(271)~~ "Significant industrial user" means:

9 (a) Except as provided in paragraph (b) of this subsection:

10 1. Industrial users subject to categorical pretreatment standards promulgated by EPA  
11 and codified in 40 C.F.R. Chapter I, Subchapter N (Parts 401 through 471); and

12 2. Any other industrial user that:

13 a. Discharges an average of 25,000 gallons per day or more of process wastewater to  
14 the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

15 b. Contributes a process wastestream which makes up five (5) percent or more of the  
16 average dry weather hydraulic or organic capacity of the POTW treatment plant; or

17 c. Is designated as such by the control authority on the basis that the industrial user has  
18 a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment  
19 standard or requirement.

20 (b) Upon a finding that an industrial user meeting the criteria for a significant industrial  
21 user has no reasonable potential for adversely affecting the POTW's operation or for violating a  
22 pretreatment standard or requirement, the control authority may, on its own initiative or in response  
23 to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057,

determine that the industrial user is not a significant industrial user.

~~(274)~~~~(272)~~ "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA, 42 U.S.C. 9601; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers, 42 U.S.C.11023; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

~~(275)~~~~(273)~~ "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the Commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.

~~(276)~~~~(274)~~ "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

~~(277)~~~~(275)~~ "Site" means, for purposes of 401 KAR 5:050 to 5:080, the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

~~(278)~~ "SIU" means Significant Industrial User.

1       ~~(279)~~~~(276)~~ "Sludge requirements" means the following statutory provisions and  
2 administrative regulations or permits issued thereunder, or under more stringent local  
3 administrative regulations: Section 405 of the Clean Water Act, 33 U.S.C. 1345, as amended; the  
4 Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as  
5 the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 et seq. and administrative  
6 regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as  
7 amended; the Clean Air Act, 42 U.S.C. 7401 et seq., as amended; and the Toxic Substances Control  
8 Act, 15 U.S.C. 2601 et seq., as amended.

9       ~~(280)~~~~(277)~~ "SMCRA" means the Surface Mining Control and Reclamation Act, as  
10 amended [~~33 U.S.C. 1201 et seq.~~].

11       ~~(281)~~~~(278)~~ "Small facility" means a WWTP with an average daily design capacity less  
12 than 10,000 GPD or sewer lines of less than 2,500 feet in length including appurtenances.

13       ~~(282)~~~~(279)~~ "Small nonpublicly owned treatment works" means a facility which has a  
14 design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and  
15 which is not a POTW.

16       ~~(283)~~~~(280)~~ "Small WWTP" means:

17       (a) A WWTP with an average daily design capacity of less than 10,000 gpd; or

18       (b) For coal washing facilities, a WWTP which serves a portable coal processing  
19 facility.

20       ~~(284)~~ "Small municipal separate storm sewer system" means all municipal separate  
21 storm sewers that are:

22       (a) Not defined as "large" or "medium" municipal separate storm sewer systems  
23 pursuant to this regulation, or designated in 401 KAR 5:060, Section 12(1)(a)5.

(b) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(285) "Small MS4" means a small municipal separate storm sewer system.

(286)[(281)] "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(287)[(282)] "SPCC" means spill prevention control and countermeasure.

(288)[(283)] "Standard" means:

(a) For purposes of 401 KAR 5:026, 5:029, 5:030 or 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(289)[(284)] "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(290)[(285)] "Storm water discharge associated with industrial activity" means the discharge from any conveyance that ~~[which]~~ is used for collecting and conveying storm water and that ~~[which]~~ is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in ~~[paragraphs (a) to (j) of]~~ this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment;

1 sites used for residual treatment, storage, or disposal; shipping and receiving areas;  
2 manufacturing buildings; storage areas including tank farms for raw materials, and intermediate  
3 and final [~~finished~~] products; and areas where industrial activity has taken place in the past and  
4 significant materials remain and are exposed to storm water. For the purposes of this definition,  
5 material handling activities include storage, loading and unloading, transportation, or conveyance  
6 of any raw material, intermediate product, final product, by product or waste product. [~~categories~~  
7 ~~of industries identified in paragraph (k) of this subsection, the term includes only storm water~~  
8 ~~discharges from all the areas except access roads and rail lines, that are listed in the previous~~  
9 ~~sentence where material handling equipment or activities, raw materials, intermediate products,~~  
10 ~~final products, wastes materials, by products, or industrial machinery are exposed to storm water.~~  
11 ~~For the purposes of this subsection, material handling activities include storage, loading and~~  
12 ~~unloading, transportation, or conveyance of any raw material, intermediate product, final product,~~  
13 ~~by product or waste product.~~] The term excludes areas located on plant lands separate from the  
14 plant's industrial activities, such as office buildings and accompanying parking lots as long as the  
15 drainage from the excluded areas is not mixed with storm water drained from the above  
16 described areas. Industrial facilities including industrial facilities that are federally, State, or  
17 municipally owned or operated that meet the description of the facilities listed in paragraphs (a)  
18 through (k) of this subsection include those facilities designated under the provisions of 401  
19 KAR 5:060, Section 12(1)(a)5. The following categories of facilities are considered to be  
20 engaging in "industrial activity" for purposes of this definition [~~subsection~~]:

21 (a) Facilities subject to storm water effluent limitations guidelines, new source  
22 performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4,  
23 except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of

1 this subsection;

2 (b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except  
3 265 and 267; 28 except 283; 29; 311; 32 except 323; 33; 3441; and 373;

4 (c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral  
5 industry) including active or inactive mining operations, except for areas of coal mining operations  
6 that are no longer reclamation areas because the performance bond issued to the facility by the  
7 appropriate SMCRA authority has been released, or except for areas of noncoal mining operations  
8 which have been released from applicable state or federal reclamation requirements after December  
9 17, 1990, and oil and gas exploration production, processing, or treatment operations, or  
10 transmission facilities that discharge storm water contaminated by contact with or that has come  
11 into contact with, any overburden, raw material, intermediate products, finished products, by-  
12 products, or waste products located on the site of these operations;

13 (d) Hazardous waste treatment, storage, or disposal facilities, including those that are  
14 operating under interim status or a permit under Subtitle C of RCRA;

15 (e) Landfills, land application sites, and open dumps that receive or have received any  
16 industrial wastes, that is waste that is received from any of the facilities described under this  
17 subsection, including those that are subject to regulation under Subtitle D of RCRA;

18 (f) Facilities involved in the recycling of materials, including metal scrapyards, battery  
19 reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as  
20 Standard Industrial Classification 5015 and 5093;

21 (g) Steam electric power generating facilities, including coal handling sites;

22 (h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42  
23 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment

1 cleaning operations, or airport deicing operations. Only those portions of the facility that are either  
2 involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting,  
3 fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are  
4 otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with  
5 industrial activity;

6 (i) Treatment works treating domestic sewage or any other sewage sludge or  
7 wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of  
8 municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are  
9 located within the confines of the facility, with a design flow of one and zero-tenths (1.0) mgd or  
10 more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included  
11 are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially  
12 reused and which are not physically located in the confines of the facility, or areas that are in  
13 compliance with Section 405 of the CWA, 33 U.S.C. 1345;

14 (j) Construction activity including clearing, grading and excavation, ~~[activities]~~  
15 except operations that result in the disturbance of less than five (5) acres of total land area ~~[which~~  
16 ~~are not part of a larger common plan of development or sale;].~~ Construction activity also includes  
17 the disturbance of less than five (5) acres of total land area that is a part of a larger common plan  
18 of development or sale if the larger common plan will ultimately disturb five (5) acres or more;

19 (k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265,  
20 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, and  
21 4221-25; ~~[and which are not otherwise included within categories of paragraphs (b) to (j) of this~~  
22 ~~subsection.]~~

23 (291) Storm water discharge associated with small construction activity means the



discharge of storm water from:

(a) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The cabinet may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five (5) acres where:

1. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five (5) during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of *Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE)*, pages 21-64, dated January 1997 incorporated by reference in Section 3 of this administrative regulation. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket , 401 M Street SW, Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the cabinet that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five (5);  
or

1           2.     Storm water controls are not needed based on a "total maximum daily load"  
2     (TMDL) approved or established by EPA that addresses the pollutants of concern or, for non-  
3     impaired waters that do not require TMDLs, an equivalent analysis that determines allocations  
4     for small construction sites for the pollutant(s) of concern or that determines that such allocations  
5     are not needed to protect water quality based on consideration of existing in-stream  
6     concentrations, expected growth in pollutant contributions from all sources, and a margin of  
7     safety. For the purpose of this subparagraph, the pollutant(s) of concern include sediment or a  
8     parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any  
9     other pollutant that has been identified as a cause of impairment of any water body that will  
10    receive a discharge from the construction activity. The operator must certify to the cabinet that  
11    the construction activity will take place, and storm water discharges will occur, within the  
12    drainage area addressed by the TMDL or equivalent analysis.

13           (b)    Any other construction activity designated by the cabinet or the EPA Regional  
14    Administrator, based on the potential for contribution to a violation of a water quality standard or  
15    for significant contribution of pollutants to waters of the Commonwealth.

16           (292)[(286)]   "Stripper well" means any oil well producing ten (10) barrels or less per day  
17    of oil.

18           (293)[(287)]   "Submission" means, for purposes of 401 KAR 5:057:

19           (a)    A request by a POTW to the cabinet for approval of a pretreatment program; and

20           (b)    A request by a POTW to the cabinet for authority to revise the discharge limits in  
21    categorical pretreatment standards to reflect POTW pollutant removals.

22           (294)[(288)]   "Supernatant" means the water that accumulates in the upper portion of a  
23    lagoon and contains no greater than two and zero-tenths (2.0) percent total solids by dry weight

analysis.

~~(295)~~~~[(289)]~~ "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

~~(296)~~~~[(290)]~~ "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the Commonwealth.

~~(297)~~~~[(291)]~~ "SWDA" means the Solid Waste Disposal Act, as amended, ~~[(42 U.S.C. 6901 et seq.)]~~.

~~[(292) "Swine feeding operation" means an operation that:~~

~~(a) Confines 1,000 or more swine units at a given time; and~~

~~(b) Is not a concentrated animal feeding operation.~~

~~(293) "Swine units" means the units of measurement used to determine the applicability of 401 KAR 5:009. The number of units shall be determined using the formula in 401 KAR 5:009.~~

~~(294) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.~~

~~(295) "Swine waste lagoon" means a structure constructed pursuant to 401 KAR 5:009 for the purpose of collecting, storing, and treating the waste from a swine feeding operation.~~

~~(296) "Swine Waste Management Permit" or "SWMP" means the permit issued pursuant to 401 KAR 5:009 that authorizes the construction or operation of one (1) or more swine waste lagoons and all related appurtenances and the implementation of a nutrient management plan at the~~

1 ~~swine feeding operation.~~

2 ~~(297) "SWMP" means a swine waste management permit.]~~

3 (298) "Tank battery" means an installation where oil is collected from wellheads and is  
4 separated from produced water.

5 (299) "TDS" means total dissolved solids.

6 (300) "Thermocline" means the plane in a thermally stratified body of water in which the  
7 maximum rate of decrease in temperature occurs with respect to depth.

8 (301) "TMDL" means Total Maximum Daily Load.

9 ~~(302)~~~~(301)~~ "Total dissolved solids" or "TDS" means the total dissolved solids (filterable  
10 residue) as determined by use of the method specified in 40 C.F.R. Part 136.

11 (303) "Total Maximum Daily Load" means a calculation of the maximum amount of a  
12 pollutant that a waterbody can receive and still meet water quality standards, and an allocation of  
13 that amount to the pollutant's sources.

14 ~~(304)~~~~(302)~~ "Total suspended solids" or "TSS" means the total suspended solids  
15 (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

16 ~~(305)~~~~(303)~~ "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 5:080, any  
17 pollutant listed as being toxic in 401 KAR 5:080.

18 ~~(306)~~~~(304)~~ "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029  
19 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water-flood  
20 impoundment on which on-site construction commenced before May 19, 1980; owned or operated  
21 by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for  
22 the purpose of diluting produced water, and if the owner or operator received approval from the  
23 cabinet of its request for designation as such on or before September 4, 1986.

1           (307) “Treatment works treating domestic sewage” means a POTW or any other sewage  
2 sludge or wastewater treatment devices or systems, regardless of ownership, including federal  
3 facilities, used in the storage, treatment, recycling, and reclamation of municipal or domestic  
4 sewage, including land dedicated for the disposal of sewage sludge.

5           (308)[(305)] “Toxic substance” means a substance that is bioaccumulative, synergistic,  
6 antagonistic, teratogenic, mutagenic or carcinogenic and causes death, disease, a behavioral  
7 abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or  
8 interferes with normal propagation.

9           (309)[(306)] “TSS” means total suspended solids.

10          (310)[(307)] “Twenty-four (24) hour composite sample” means not less than twelve (12)  
11 effluent portions collected at regular intervals over a period of twenty-four (24) hours which are  
12 composited in proportion to flow.

13          (311)[(308)] “Twenty-five (25) year, twenty-four (24) hour rainfall event” means a  
14 twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25)  
15 years, as determined by “Rainfall Frequency Values for Kentucky, Engineering Memorandum No.  
16 2, April 30, 1971, Revised July 1, 1979”, incorporated by reference in Section 3 of this  
17 administrative regulation.

18          (312) “Uncontrolled sanitary landfill” means a landfill or open dump, whether in  
19 operation or closed, that does not meet the requirements for run-on or run-off controls established  
20 pursuant to subtitle D of the Solid Waste Disposal Act, 33 U.S.C. 6901 et seq.

21          (313)[(309)] “Underground injection” means a well injection.

22          (314)[(310)] “Upset” means an exceptional incident in which there is unintentional and  
23 temporary noncompliance with categorical pretreatment standards or technology-based effluent

1 limitations because of factors beyond the reasonable control of the industrial user or permittee. An  
2 upset shall not include noncompliance to the extent caused by operational error, improperly  
3 designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or  
4 careless or improper operation.

5 (315)~~[(311)]~~ "U.S.C. " means United States Code.

6 (316)~~[(312)]~~ "U.S. EPA" means the United States Environmental Protection Agency.

7 (317)~~[(313)]~~ "USGS" means the United States Geological Survey.

8 (318)~~[(314)]~~ "Use protected water" means a surface water categorized as use protected by  
9 the cabinet pursuant to 401 KAR 5:030.

10 (319)~~[(315)]~~ "Variance" means[÷

11 ~~(a) For purposes of 401 KAR 5:050 through 5:080,~~ any mechanism or provision under  
12 the KPDES administrative regulations which allows modification to or waiver of the generally  
13 applicable effluent limitation requirements or time deadlines[÷~~or~~

14 ~~(b) For purposes of 401 KAR 5:009, a mechanism or provision that allows a~~  
15 ~~modification or waiver of specified requirements].~~

16 (320)~~[(316)]~~ "WAH" means warm water aquatic habitat.

17 (321)~~[(317)]~~ "Warm water aquatic habitat" or "WAH" means any surface water and  
18 associated substrate capable of supporting indigenous warm water aquatic life.

19 (322)~~[(318)]~~ "Wastewater system" means a sewage system as defined in KRS 224.01-  
20 010.

21 (323)~~[(319)]~~ "Wastewater treatment plant" or "WWTP" means a facility used for the  
22 treatment and disposal of sewage.

23 (324)~~[(320)]~~ "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with Sections 208 and 303(e) of the CWA, 33 U.S.C. 1288 and 1313 and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with Sections 201, 205(j), 208, and 303(e) of the CWA, 33 U.S.C. 1281, 1285j, 1288, and 1313e and 40 C.F.R. Part 130.

(325)~~[(321)]~~ "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(326)~~[(322)]~~ "Well" or "water well" means:

(a) For purposes of 401 KAR 5:005, any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes, and industrial, irrigation, and dewatering purposes;

(b) For purposes of 401 KAR 5:050 to 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or

(c) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one (1) through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one (1) into which any water, gas, produced water, or other fluid is being injected.

(327)~~[(323)]~~ "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring,

supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

(328)~~(324)~~ "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

(329)~~(325)~~ "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(330)~~(326)~~ "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(331)~~(327)~~ "WWTP" means wastewater treatment plant.

(332)~~(328)~~ "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(333)~~(329)~~ "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.

(334)~~(330)~~ "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(335)~~(331)~~ "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971,



Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.

Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, during normal business hours of 8:00 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

(1) 40 C.F.R. Part 116, "Designation of Hazardous Substances", July 1, 2001 [~~1997~~], U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328;

(2) 40 C.F.R. Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", July 1, 2001 [~~1998~~], U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(3) 40 C.F.R. Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", July 2001 [~~1997~~], U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

(4) 40 C.F.R. Part 130, "Water Quality Planning and Management," July 2001, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources

1 and Environmental Protection, Bureau of Natural Resources, Division of Water Resources, is  
2 incorporated by reference.

3 (b) “Combined Sewer Overflow Control Policy,” 59 Fed. Reg. 18688, April 19, 1994.

4 (c) “Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide  
5 to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE),” Pages 21-  
6 64, January 1997, U.S. Department of Agriculture.

7 (2) This material may be inspected, copied, or obtained, subject to applicable  
8 copyright law, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday  
9 through Friday, 8:00 a.m. to 4:30 p.m.

401 KAR 5:002 Approved for promulgation:

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James E. Bickford, Secretary  
Natural Resources and Environmental  
Protection Cabinet

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Date

**PUBLIC HEARING:** A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the administrative regulation. A transcript of the hearing will not be provided unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at the hearing, or your written comments on the administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the hearing, or by close of business on June 18, 2002 if the hearing is not held. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

**CONTACT PERSON:** Jeffrey W. Pratt, Director  
Division of Water  
Department for Environmental Protection  
14 Reilly Road, Frankfort, Kentucky 40601  
Telephone: (502) 564-3410 Fax: (502) 564-0111

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Administrative Regulation #:** 401 KAR 5:002. Definitions for 401 KAR Chapter 5.

**Contact person:** Jeffrey W. Pratt, Director  
Division of Water

**(1) Provide a brief summary of:**

- (a) What this administrative regulation does:** This administrative regulation provides the definitions for terms used in the KPDES administrative regulations and other Chapter 5 administrative regulations.
- (b) The necessity of this administrative regulation:** This administrative regulation is required by KRS 13A. The Cabinet must promulgate this administrative regulation in order to maintain a list of current definitions.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** This administrative regulation will provide definitions for Chapter 5 administrative regulations in the manner specified by KRS 13A.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation will allow the Cabinet to use up-to-date definitions including those definitions that have been added or modified to the corresponding federal regulations.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

- (a) How the amendment will change this administrative regulation:** This amendment will add new definitions and modify existing definitions so as to make them compatible with the corresponding federal regulations located in title 40 of the CFR's and with KRS 13A.
- (b) The necessity of the amendment to this administrative regulation:** If this administrative regulation is not amended as proposed, some of the definitions for KAR Chapter 5 will continue to be outdated or missing.
- (c) How the amendment conforms to the content of the authorizing statutes:** The amended definitions adhere to the provisions of KRS 13A.
- (d) How the amendment will assist in the effective administration of the statutes:** The various Chapter 5 administrative regulations which are promulgated pursuant to KRS Chapter 224 cannot be effectively applied without current definitions.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** This administrative regulation will apply to all of the entities currently regulated by KAR Chapter 5.

**(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:** The impact of this administrative regulation will be non-existent because the corresponding federal definitions have already gone onto effect and apply to all Kentucky

facilities.

- (5) **Provide an estimate of how much it will cost to implement this administrative regulation:**
- (a) **Initially:** The first year, the Cabinet will incur no additional costs.
  - (b) **On a continuing basis:** There will be no additional costs attributable to this amended administrative regulation.
- (6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** There will be no change in the funding sources due to this amended administrative regulation.
- (7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** No increase in fees or funding will be necessary to implement this amended administrative regulation.
- (8) **State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:** This administrative regulation does not establish or directly or indirectly increase any fees.
- (9) **TIERING: Is tiering applied?** No.  
(**Explain why tiering was or was not used**) Tiering was not applied to this regulation since it merely defines terms that are used in other regulations in this chapter. Therefore, tiering is not applicable. The individual regulations where the terms are used may be tiered.

## FEDERAL MANDATE ANALYSIS COMPARISON

**Administrative Regulation #:** 401 KAR 5:002

**Contact person:** Jeffrey W. Pratt

1. **Federal statute or regulation constituting the federal mandate.** There is no federal mandate that there be a definition regulation. Some terms that are in this regulation are the same as the federal regulations.
2. **State compliance standards.** The corresponding state regulations for the federal NPDES regulations are in 401 KAR 5:050 to 5:080, but are being amended to incorporate the federal changes to that program since 1994. Some of these new federal definitions are being incorporated into this regulation.
3. **Minimum or uniform standards contained in the federal mandate.** There are no specific standards, but the federal definitions occur in various places throughout the federal programs.
4. **Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?** No, the additional and modified definitions match those found in the corresponding federal regulations.
5. **Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** No stricter standards are being proposed.

## FISCAL NOTE ON LOCAL GOVERNMENT

**Administrative Regulation #:** 401 KAR 5:002

**Contact person:** Jeffrey W. Pratt

New \_\_\_\_\_ Amendment       X      

- 1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?**

Yes       X       No \_\_\_\_\_

- 2. State what unit, part or division of local government this administrative regulation will affect.** This administrative regulation will affect city, county, or other municipal governments, including special districts, sanitation districts, etc.
- 3. State the aspect or service of local government to which this administrative regulation relates.** This administrative regulation relates to those entities that operate facilities that discharge into waters of the Commonwealth.
- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.** No effect. This regulation merely defines terms. It does not impact the expenditures or revenues of any local government.

**Revenues (+/-):** None

**Expenditures (+/-):** None

**Other Explanation:** None



**SUMMARY OF FEDERAL REGULATIONS  
ADOPTED WITHOUT CHANGE  
IN 401 KAR 5:002**

- (1) 40 C.F.R. Part 116, “Designation of Hazardous Substances under the Federal Water Pollution Control Act,” U.S. Environmental Protection Agency, as of July 1, 2001.
  - (a) This federal regulation designates hazardous substances under the federal Water Pollution Control Act.
  - (b) 401 KAR 5:002, Section 1 defines a hazardous substances as any substances designated under 40 C.F.R. Part 116.
  - (c) This document is 11 pages.
- (2) 40 C.F.R. Part 136, “Test Procedures for the Analysis of Pollutants”, U.S. Environmental Protection Agency, as of July 1, 2001.
  - (a) This federal regulation prescribes the procedures for analyzing pollutants required to be measured.
  - (b) 401 KAR 5:002, Section 1 requires that total dissolved solids (TDS) and total suspended solids (TSS) be measured according to the procedures specified in Part 136.
  - (c) This document is 325 pages.
- (3) 40 C.F.R. Chapter 1, Subchapter N, Parts 401 through 471, “Effluent Guidelines and Standards,” U.S. Environmental Protection, as of July 1, 2001.
  - (a) This federal regulation prescribes the effluent guidelines and standards that are required to be used by pretreatment facilities and publicly owned treatment works.
  - (b) 401 KAR 5:002, Section 1 defines a significant industrial user to be those industrial users that are subject to categorical pretreatment standards codified in 40 C.F.R. Parts 401 through 471.
  - (c) This document is 1,449 pages.
- (4) 40 C.F.R. Part 130, “Water Quality Planning and Management,” U.S. Environmental Protection Agency, as of July 2001.
  - (a) This federal regulation prescribes water quality planning and management procedures.
  - (b) 401 KAR 5:002, Section 1 contains definitions for “Water Quality Management Plan” and “Regional Planning Agency,” which are implemented pursuant to 40 C.F.R. Part 130.
  - (c) This document is 29 pages.

The total number of pages adopted without change is 1,814 pages.

**SUMMARY OF DOCUMENTS INCORPORATED BY REFERENCE  
IN 401 KAR 5:002**

- (1) “Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979”; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources.
  - (a) This document contains precipitation amounts for various duration and recurrence interval storm events for all Kentucky counties.
  - (b) 401 KAR 5:002 Section 1(311) and (336) both refer to rainfall events whose values are found within this document.
  - (c) This memorandum is 37 pages.
- (2) “Combined Sewer Overflow Control Policy”, April 19, 1994, U.S. Environmental Protection Agency.
  - (a) This document contains the EPA policy for combined sewer overflows.
  - (b) 401 KAR 5:002, Section 1(164) defines a “long-term CSO control plan” as one that complies with this document.
  - (c) This policy is 10 pages.
- (3) “Agriculture Handbook No. 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)”, pages 21-64, January 1997, U.S. Department of Agriculture.
  - (a) This document contains information necessary to predict erosion-induced soil loss.
  - (b) 401 KAR 5:002, Section 1(291) defines storm water associated with small construction activity which references this document to determine the rainfall erosivity factor, “R”.
  - (c) This document is 51 pages.

The total number of pages incorporated by reference is 98 pages.